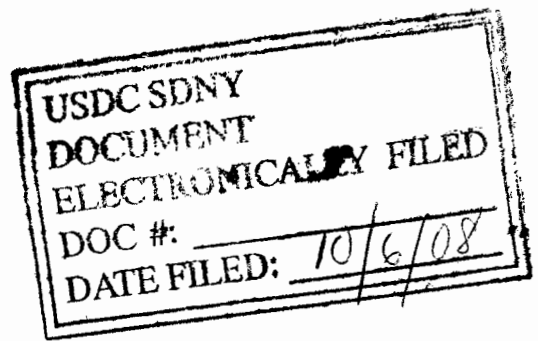


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



PENSION COMMITTEE OF THE
UNIVERSITY OF MONTREAL PENSION
PLAN, *et al.*,

Plaintiffs,

- against -

CITCO FUND SERVICES N.V., *et al.*,

Defendants.

MEMORANDUM
OPINION AND ORDER

05 Civ. 9016(SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

The Receiver of the Offshore Funds, Michael Lauer, and certain Lauer-controlled entities now moves to intervene in the above-captioned action for the sole purpose of moving to modify the Stipulated Confidentiality Order in that case to permit him to receive certain documents designated as confidential pursuant to that Order.¹ The Citco defendants² do not oppose the motion to

¹ See 8/4/08 Letter from Courtney Caprio, receiver's counsel, to this Court.

² The Citco Group, Ltd., Citco Fund Services (Curacao)N.V., Anthony Stocks, Kieran Controy, and Declan Quilligan.

intervene.³ Accordingly, it is hereby ordered that the Receiver is permitted to intervene in this action.

In their August 25, 2008 letter, the Citco defendants present their opposition to the Receiver's letter motion to modify the protective order. They correctly set forth the standard for the modification of such an order.⁴ They then argue that the Receiver has failed to establish good cause for the modification of the Order and that modification would be inappropriate because of the parties' reliance on the protective order. The Citco defendants strongest argument is that the Receiver's claims against the Citco defendants in an action pending in Florida have twice been dismissed.⁵ While the Receiver has filed a Second Amended Complaint, the defendants again intend to move to dismiss.

Until such time as the Receiver has successfully stated a claim, his application to obtain confidential material must be denied. However, if and when his claims are permitted to proceed in the Florida action, the Receiver may again

³ See 8/25/08 from Dyanne E. Feinberg, counsel to the Citco defendants, to this Court.

⁴ See *id.* (citing *Bayer AG and Miles, Inc. V. Barr Labs., Inc.*, 162 F.R.D. 456, 462-63 (S.D.N.Y. 1995)).

⁵ See *Court Appointed Receiver v. Citco Group Ltd.*, No. 05-60080-Civ., 2008 WL 926513 (S.D. Fla. Mar. 31, 2008).

request that this Court modify its Confidentiality Order to permit him to obtain certain materials produced by the parties in the action pending in this Court.

The Receiver's motion to modify the Confidentiality Order is denied without prejudice and with leave to renew at the appropriate time.

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Shira A. Scheindlin', is written over a horizontal line.

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
October 6, 2008

- Appearances -

For Plaintiffs:

Gregory T. Arnold, Esq.
Brown Rudnick
One Financial Center
Boston, Massachusetts 02111
(617) 856-8539

David C. Cimo, Esq.
Manuel Ricardo Gonzalez, Esq.
Genovese Joblove & Battista
100 SE 2nd Street
Bank America Tower, 44th Floor
Miami, Florida 33131
(305) 349-2300

Anne Elizabeth Beaumont, Esq.
Scott M. Berman, Esq.
Friedman, Kaplan, Seiler & Adelman
1633 Broadway
New York, New York 10019
(212) 833-1100

For Defendants CITCO Fund Services N.V., Citco Fund Services (Curacao) N.V., Citco Group Limited, Anthony J. Stocks, Declan Quilligan, and Kieran Conroy:

Lewis Nathan Brown, Esq.
Bryan R. Cleveland, Esq.
Dyanne Eyce Feinberg, Esq.
Rosana E. Hernandez, Esq.
Elizabeth A. Izquierdo, Esq.
Douglas J. Jeffrey, Esq.
Terence Michael Mullen, Esq.
Gilbride Heller & Brown P.A.
2 South Biscayne Blvd
One Biscayne Tower Suite 1570
Miami, Florida 33131
(305) 358-3580

Michael John Dell, Esq.
Timothy P. Harkness, Esq.
Kramer Levin Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9129

Eliot Lauer, Esq.
Curtis, Mallet-Prevost, Colt & Mosle
101 Park Avenue
New York, NY 10178
(212) 696-6192

For Defendant PriceWaterHouseCoopers:

Jeffrey Mark Greilsheimer, Esq.
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6772

For Defendant Richard Geist:

Jonathan Lee Hochman, Esq.
Daniel Eric Shaw, Esq.
Schindler Cohen & Hochman
100 Wall Street
New York, New York 10005
(212) 277-6330

For Defendant John W. Bendall, Jr.:

Robert Edward Pershes, Esq.
Buckingham, Doolittle & Burroughs, LLP
5355 Town Center Road, Suite 900
Boca Raton, Florida 33486
(561) 241-0414

For Defendant International Fund Services (Ireland) Ltd.:

Seth M. Schwartz, Esq.
Skadden, Arps, Slate, Meagher & Flom
Four Times Square
New York, New York 10036
(212) 735-3000

For Defendant Banc of America Securities LLC:

Peter Kristian Vigeland, Esq.
Dawn M. Wilson, Esq.
Wilmer, Cutler, Hale & Dorr, L.L.P.
399 Park Avenue
New York, New York 10022
(212) 230-8800